

RESOLUTION 06-12-2018

DIGEST

Law Enforcement Complaints: Automatic Provision of Complaining Statements and Disposition Amends Penal Code section 832.7 to require law enforcement agencies to provide a complaining party a copy of her/his own statements and the disposition of the complaint without requiring the complainant to file a request.

STATEMENT OF REASONS

The Problem: It's hard enough to make a complaint against a police officer. When a citizen screws up the courage to complain it can take forever to find out what happened. The police don't give the person a copy of their statement unless the person asks. The disposition is usually nothing more than "founded, unfounded, not sustained" or some similar language. It's all very vague and the process does nothing to instill confidence in the police and how they investigate wrongdoing.

The Solution: This resolution makes some simple changes that will enhance the transparency of police personnel complaints. The complainant can get a copy of his or her statement at any time. The disposition notification must have some explanation of how the police reached their conclusion. That's it!

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 832.7 to read as follows:

- 1 § 832.7
- 2 (a) Peace officer or custodial officer personnel records and records maintained by any
- 3 state or local agency pursuant to Section 832.5, or information obtained from these records, are
- 4 confidential and shall not be disclosed in any criminal or civil proceeding except by discovery
- 5 pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to
- 6 investigations or proceedings concerning the conduct of peace officers or custodial officers, or an
- 7 agency or department that employs those officers, conducted by a grand jury, a district attorney's
- 8 office, or the Attorney General's office.
- 9 (b) Notwithstanding subdivision (a), a department or agency shall release to the
- 10 complaining party a copy of his or her own statements at the time the complaint is filed, without
- 11 need for a request, and at any time thereafter upon request.
- 12 (c) Notwithstanding subdivision (a), a department or agency that employs peace or
- 13 custodial officers may disseminate data regarding the number, type, or disposition of complaints
- 14 (sustained, not sustained, exonerated, or unfounded) made against its officers if that information
- 15 is in a form which does not identify the individuals involved.
- 16 (d) Notwithstanding subdivision (a), a department or agency that employs peace or
- 17 custodial officers may release factual information concerning a disciplinary investigation if the
- 18 officer who is the subject of the disciplinary investigation, or the officer's agent or
- 19 representative, publicly makes a statement he or she knows to be false concerning the
- 20 investigation or the imposition of disciplinary action. Information may not be disclosed by the

21 peace or custodial officer’s employer unless the false statement was published by an established
22 medium of communication, such as television, radio, or a newspaper. Disclosure of factual
23 information by the employing agency pursuant to this subdivision is limited to facts contained in
24 the officer’s personnel file concerning the disciplinary investigation or imposition of disciplinary
25 action that specifically refute the false statements made public by the peace or custodial officer
26 or his or her agent or representative.

27 (e)(1) The department or agency shall provide written notification to the complaining
28 party of the disposition of the complaint within 30 days of the disposition without need for a
29 request and at any time after disposition upon the request of the complaining party
30 notwithstanding the fact that written notification has already been given in compliance with this
31 section. This notification shall include an explanation of how and why the reported disposition
32 was reached.

33 (2) The notification described in this subdivision shall not be conclusive or binding or
34 admissible as evidence in any separate or subsequent action or proceeding brought before an
35 arbitrator, court, or judge of this state or the United States.

36 (f) Nothing in this section shall affect the discovery or disclosure of information
37 contained in a peace or custodial officer’s personnel file pursuant to Section 1043 of the
38 Evidence Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolutions 03-12-2004, 06-06-2007, 06-10-2009, 03-09-2012, and 07-02-2015,
which were approved in principle or as amended, and Resolution 03-08-2012, which was
disapproved.

Reasons:

This resolution amends Penal Code section 832.7 to require law enforcement agencies to provide a complaining party a copy of her/his own statements and the disposition of the complaint without requiring the complainant to file a request. This resolution should be approved in principle because it reduces unnecessary bureaucracy and paperwork associated with complaints against law enforcement, and the burden on law enforcement to comply is minimal and outweighed by the benefits to society of a more open and transparent law enforcement system.

Current law states that a law enforcement department or agency shall release to the complaining party a copy of that party's own statements at the time the complaint is filed. However, current law is silent as to whether the complainant must submit a request for her/his own statement. As a result, a law enforcement agency or department that requires a formal request increases barriers to justice in its community. The resolution seeks to clarify that a complaining party should not bear the burden of submitting a request for a document that is already required under the law, which would save resources for law enforcement and ease bureaucratic burdens on community members who filed complaints. The resolution also clarifies that, upon a request subsequent to the time of filing the complaint, the agency or department shall be required to release a copy of the complainant's own statements.

Current law also states that the department or agency shall provide written notification to the complaining party of the disposition of the party's complaint within 30 days of the disposition, but is silent as to the need for the complainant to file a request, and lacking in detail as to what that notification of disposition shall include. The resolution would clarify that the disposition would be provided automatically without the filing of a request within 30 days of the disposition, and upon request thereafter. The resolution further specifies that the notice of disposition shall include an explanation of how and why the disposition was reached. Both of these provisions reduce barriers to justice for parties wishing to learn the outcome of their complaints against law enforcement, and may have the added advantage of increasing trust between communities and law enforcement because of the increased transparency and reduced bureaucracy.